IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

Crl.Rev.Pet.No. 2822 of 2007()

CRA.602/2006 of ADDL.SESSIONS COURT,-I, MAVELIKKARA
CC.798/2005 of JUDL.MAGISTRATE OF FIRST CLASS, HARIPAD

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REVN. PETITIONER: APPELLANT/ACCUSED

SHELVARAJ, PROPRIETOR,
VAZHAKKALIL JEWELLERS, VAZHAKKALIL HOUSE,
POTHAPPALLY NORTH, KUMARAPURAM.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SMT.KAVITHA GANGADHARAN

RESPONDENTS: RESPONDENTS/COMPLAINANT AND STATE

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1. MOHANAN, THATTAMPARAMBIL VEEDU,
THULAMPARAMBU SOUTH MURI, HARIPAD VILLAGE.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 27/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.R.P.No.2822 of 2007

Dated this the 27th day of July, 2007

O R D E R

The revision petitioner stands convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced, as modified by the appellate court, to undergo simple imprisonment for three months and to pay a compensation of Rs.2,00,000/- to the complainant and in default, to undergo simple imprisonment for three months.

2. It is the case of the complainant is that the accused borrowed a sum of Rs.2,00,000/- from him and towards discharge of the liability, cheque dated 4.9.04 was issued which when presented for encashment got dishonoured for want of funds in the account of the accused. Notice demanding payment was sent which was received but there was no response. There was no payment also.

3. The evidence adduced in the matter consisted the testimony of PW1 and Exts. P1 to P8.

4. The case set up by the defence is that the amount borrowed was only a sum of Rs.1,00,000/- and that the same was borrowed from the wife of the complainant and that the complainant was abroad. There was no other objective evidence adduced in the matter to substantiate the defence case. I find that the evidence of PW1 supported by Exts. P1 to P6 do establish the execution of the cheque and dishonour of the same for want of funds in the account of the accused as well as the compliance of the statutory formalities by the complainant. The accused has not adduced any evidence to rebut the statutory presumptions. Even reply notice has not been sent. Hence, I find no reason to interfere in the concurrent findings of the court below in exercise of the revisional jurisdiction of this court. The conviction is confirmed.

5. In the circumstances, considering the plea of the counsel for the revision petitioner, the sentence is modified to imprisonment till the rising of the court. The rest of the sentence is confirmed. Revision petitioner is granted six months' time from today onwards to remit the amount of compensation. He shall

appear before the Judicial First Class Magistrate Court-I, Haripad on 28.1.2008 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl